United Nations E/C.19/2006/6/Add.13

# Economic and Social Council

Distr.: General
21 March 2006

Original: English

**Permanent Forum on Indigenous Issues**
**Fifth session**
New York, 15-26 May 2006
Items 3 and 4 of the provisional agenda*

**Special theme: the Millennium Development Goals and indigenous peoples: redefining goals**

**Ongoing priorities and themes**

## Information received from the United Nations system**

## World Intellectual Property Organization

*Summary*

By the present note, the World Intellectual Property Organization (WIPO) responds to the recommendations of the Permanent Forum on Indigenous Issues made at its fourth session in 2005. In particular, attention is drawn to: (a) the draft instruments for the protection against misappropriation and misuse of traditional cultural expressions/expressions of folklore and of traditional knowledge being discussed by the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore; (b) the establishment by its General Assembly of a voluntary fund for accredited indigenous and local communities; (c) the initiation by WIPO of consultations and studies on the relationship between customary law and intellectual property; and (d) the ongoing WIPO programme of consultations and capacity-strengthening with indigenous peoples and local communities, often in cooperation with other United Nations agencies and organizations, as well as the Forum.

The present note also reports on WIPO's participation in a technical workshop on indigenous traditional knowledge, held in Panama City from 21 to 23 September 2005 and convened by the Inter-Agency Support Group on Indigenous Issues, organized by the secretariat of the Forum and hosted by the Regional Office for Latin America and the Caribbean of the United Nations Children's Fund.

* E/C.19/2006/1.

** The present document was submitted late in order to ensure the inclusion of the most recent information.

06-27917 (E) 100406

# I. Responses to recommendations addressed or relevant to the World Intellectual Property Organization on indigenous issues

1. The recommendations of the fourth session of the Forum on Indigenous Issues that addressed or were relevant to the World Intellectual Property Organization (WIPO) continue to guide not only the work of the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore itself but also the broader activities of WIPO on related issues.

2. In response to those recommendations, the present note provides the information set out below.

## Draft instruments on the protection of traditional knowledge and cultural expressions against misappropriation and misuse

3. The protection of traditional knowledge and cultural expressions against misappropriation and misuse is the subject of active policy development, norm- and capacity-building programmes at WIPO. Policy development and norm-building are mainly conducted by the Intergovernmental Committee.

4. WIPO member States have called for accelerated progress in that area, stressed the international dimension of issues and emphasized that no outcome of the WIPO work in that area can be excluded, including the development of international instruments. They have also underscored that WIPO work should not prejudice developments in other forums.

5. More recent sessions of the Intergovernmental Committee have examined draft principles and objectives[1] that could shape specific instruments for traditional knowledge and cultural expressions. Such an approach to protection could recognize, among other things, collective interests in traditional know-how and expressions of traditional cultures that are characteristic of a distinct cultural identity. The interests would be respected for as long as a traditional community continues to be associated with the knowledge or cultural expressions.

6. The drafts include compliance with the principle of free, prior and informed consent and the recognition of customary laws and practices. In line with the views of many indigenous and traditional communities, the draft provisions do not require the assertion of new exclusive property rights over traditional knowledge or cultural expressions, but accommodate that option should communities wish to take it up.

7. The drafts have not been adopted or endorsed by the Intergovernmental Committee and may be developed further. They draw upon a wide range of community, national and regional experiences, and have been developed over several years by and in consultation with member States, indigenous peoples and other traditional and cultural communities, civil society organizations and a range of other concerned parties. Earlier drafts of the objectives and principles were the subject of an open commenting process established by the Committee.

[1] See www.wipo.int/meetings/en/details.jsp?meeting_id=9765 and www.wipo.int/tk/en/consultations/draft_provisions/comments.html.

8. The draft materials are being used as reference in a range of national, regional and international policy discussions and standard-setting processes. Details of the background to these documents and the wide range of materials and perspectives that shaped them can be found on the WIPO website (www.wipo.int/tk/en/index.html).

9. While the draft objectives and principles have no formal status, they illustrate some of the perspectives and approaches that are guiding work in the area, and could suggest possible frameworks for the protection of traditional knowledge and cultural expressions against misappropriation and misuse.

10. There are two distinct sets of draft objectives and principles: the first deals with traditional cultural expressions ("expressions of folklore"), the second with traditional knowledge as such. The distinction reflects the choice made in many cases to address the specific policy and legal questions raised by the two areas. The draft materials are prepared, however, in the understanding that for many communities the areas are closely related — even integral — aspects of respect for and protection of their cultural and intellectual heritage. The two sets of draft objectives and principles are therefore complementary. Some jurisdictions protect both traditional cultural expressions and traditional knowledge in a single instrument, while others use a range of laws and instruments to address the two areas (or specific aspects of them) distinctly.

11. The objectives and principles contained in the draft instruments will be discussed again by the Intergovernmental Committee at its ninth session from 24 to 28 April 2006.

12. All working documents, comments, papers, studies, databases, questionnaires and other material prepared for consideration by the Intergovernmental Committee, as well as comprehensive reports of its sessions, are available in English, French and Spanish on the WIPO website.

## Participation of indigenous peoples and local communities

13. The member States of WIPO have repeatedly stressed the priority of participation of the Forum and indigenous representatives in the sessions of the Intergovernmental Committee. There is continuing exploration and consultation on options and modalities for facilitating and generally improving the participation of indigenous peoples in WIPO activities. The practical experience and guidance of the Forum and its members provide invaluable input to achieving that goal. Member States of WIPO have expressed their unanimous support for directly involving as much as possible representatives of indigenous and local communities in the work of the Committee.

14. In that regard, the following of practical steps have already been undertaken:

(a) A fast-track accreditation procedure for all non-governmental organizations has been in place since the first session of the Intergovernmental Committee in April 2001. More than 120 non-governmental organizations have received accreditation, the majority representing indigenous peoples. No applicant has been denied accreditation (see www.wipo.int/tk/en/igc/index.html);

(b) The General Assembly of WIPO has extended a formal invitation to the Forum to take part in the sessions of the Intergovernmental Committee, and many participants have welcomed its active participation;

(c) A number of member States have adopted the practice of funding the participation of representatives of indigenous and local communities in the sessions of the Intergovernmental Committee;

(d) The funds provided by WIPO to support the participation of member States that are developing countries have been used in some cases by such countries to support the participation of leaders of their indigenous or local communities;

(e) Consultations and workshops at the national and regional levels and other forums aimed at developing focused input for the Intergovernmental Committee have included representatives of the Forum and indigenous and local communities as speakers and participants;

(f) The WIPO website provides for written contributions by accredited non-governmental organizations on the issues before the Intergovernmental Committee;

(g) Specific briefings and consultations for representatives of non-governmental organizations, particularly representatives of indigenous and local communities, are also undertaken within the framework of meetings of the Intergovernmental Committee;

(h) The WIPO secretariat has continued its practice of consulting with interested representatives of indigenous and local communities on draft documents and other material being developed for the Intergovernmental Committee, as well as related capacity-building and informational documents, including a series of case studies and a distance learning course contributed to by indigenous experts;

(i) The General Assembly of WIPO has recently established a voluntary fund for accredited indigenous and local communities, devised to facilitate the participation in sessions of the Intergovernmental Committee of representatives of indigenous and local communities, and other customary holders or custodians of traditional knowledge and cultural expressions, already accredited to the Committee. The extent of support that the voluntary fund can provide depends on the resources donated to it. Any potential donors are encouraged to contact the WIPO secretariat for further information. Even modest contributions will contribute to the success of the fund (see www.wipo.int/tk/en/ngoparticipation/voluntary_fund/index.html);

(j) The Intergovernmental Committee decided in November 2004 that its future sessions should be preceded by panel presentations chaired by a representative of an indigenous or local community. Such a panel, on the theme "Indigenous and local communities' concerns and experiences in promoting, sustaining and safeguarding their traditional knowledge, traditional cultural expressions and genetic resources", was held at the commencement of the eighth session of the Committee from 6 to 10 June 2005. The panel comprised seven participants of indigenous and local communities from Canada, Indonesia, Papua New Guinea, Peru, Sweden, Ukraine and Zambia, whose participation was funded by WIPO. The participant from Canada was Wilton Littlechild, a member of the Forum. A similar panel will be held before the ninth session of the Committee from 24 to 28 April 2006.

## Consultations and studies on customary laws and intellectual property

15. WIPO has initiated a process of study and consultation on two related questions: the role of customary laws and protocols of indigenous and local communities in relation to their traditional knowledge, genetic resources and cultural expressions, and the relationship of customary laws and protocols with the intellectual property system. Work builds on an extensive background of consultation and reflection on the role of customary laws and protocols, both within the Intergovernmental Committee and in a broader WIPO dialogue with indigenous communities, such as the fact-finding consultations in the late 1990s that set the direction of WIPO work in the area. As noted above, the draft provisions for the protection of traditional knowledge and cultural expressions already take account of the role of customary law, the study process would complement those developments. The full background is described in an issues paper[7] drafted to facilitate further consultations on the question.

16. Several mechanisms have been put in place to encourage and facilitate participation by indigenous peoples and local communities. Interested parties are invited to submit papers, including commentaries, case studies and analysis dealing with the relationship between customary law and protocols and (a) the protection of traditional knowledge and cultural expressions against misuse and misappropriation, or (b) intellectual property law in general and the administration and development of the intellectual property system. The papers may respond to a draft background and issues paper that has been prepared,[7] but need not. A set of suggested guidelines[8] has been prepared to stimulate papers (see also www.wipo.int/tk/en/consultations/customary_law/index.html).

## Access to genetic resources and benefit-sharing

17. Concerning genetic resources, WIPO's work does not relate to the protection of genetic resources as such. Genetic resources (such as microbes or plants) are physical resources not intellectual property, even though they are often integrally associated with traditional knowledge and practices. WIPO does, however, deal with intellectual property issues relating to genetic resources (e.g. a biotech invention derived from a genetic resource). Because of the close association of genetic resources with traditional knowledge, some national biodiversity laws protect both. A "disclosure of origin" requirement in patent applications is regarded by many States and others as an instrument to ensure the traceability of genetic resources and associated traditional knowledge, and to support compliance with free, prior and informed consent and fair and equitable benefit-sharing, in furtherance inter alia of the objectives of the Convention on Biological Diversity. Others call for alternative approaches to strengthening the link between equitable benefit-sharing and the intellectual property system. Discussions on those issues continue in WIPO and in other forums. WIPO cooperates closely with the secretariat of the Convention on

[7] See http://www.wipo.int/tk/en/consultations/customary_law/issues.pdf.

[8] See www.wipo.int/tk/en/consultations/customary_law/guidelines.pdf.

Biological Diversity in relation to those questions and has prepared technical studies at its request [4]

## Capacity-building

18. The programme of activities in the area of capacity-building includes a range of complementary practical activities, such as legislative assistance, awareness-raising and training as well as cooperation with a broad spectrum of national, regional and international initiatives. Recent examples include a subregional meeting in Tashkent in which the Forum was invited to participate by WIPO and a workshop for indigenous peoples, especially indigenous women, of Panama, held in Panama City in October 2005.

## Contribution of expertise and experience by the Permanent Forum

19. The Forum has been represented at sessions of the Intergovernmental Committee and at other national and regional events organized by WIPO. In 2002, the General Assembly of WIPO decided by consensus to extend a specific invitation to the Forum to take part in sessions of the Committee. The Forum has played a prominent role in Committee discussions on the enhancement of indigenous participation in the Committee, and contributed in particular to the development of the proposal for a WIPO voluntary fund for indigenous and local communities, which has now been established. The Forum has also taken part in two WIPO regional conferences on the protection of traditional knowledge and cultural experiences. WIPO was, for example, very pleased that the Forum accepted its invitation to participate in a subregional meeting on traditional knowledge, cultural experiences and genetic resources held in Tashkent from 18 to 20 October 2005.

20. WIPO, the Forum and its secretariat have an excellent working relationship. At the most recent session of the Intergovernmental Committee, the representative of the Forum stated that it wished to maintain an important collaborative partnership with WIPO. WIPO believes that the Forum has already played a significant role in contributing expertise and experience to its activities and appreciates the mutual cooperation.

## Recent publications

21. The following studies[5] may be of interest to the Forum:

- Booklets on intellectual property and traditional cultural expressions/folklore and on intellectual property and traditional knowledge
- Case studies on intellectual property and traditional cultural expressions, by Terri Janke (Australia)

[4] For more information, see www.wipo.int/tk/en/genetic/ and www.wipo.int/tk/en/genetic/proposals/index.html.

[5] Available upon request from the WIPO secretariat and at www.wipo.int/tk/en/publications/index.html.

- National experiences with the protection of expressions of folklore/traditional cultural expressions, by Valsala Kutty (India)
- Consolidated analysis of the legal protection of traditional cultural expressions/expressions of folklore
- Study on the role of intellectual property rights in the sharing of benefits arising from the use of biological resources and associated traditional knowledge

22. A collection of the presentations made by participants in the indigenous panels at past and upcoming sessions of the Intergovernmental Committee will also be published.

### Cooperation with other organizations and agencies

23. As requested by member States and as recommended by the Forum, WIPO continues to cooperate with other organizations and agencies on issues of concern to the Forum and to ensure that its work on recognition and protection of traditional knowledge and cultural expressions is complementary to and supportive of their work. They include the secretariat of the Convention on Biological Diversity, the Food and Agriculture Organization of the United Nations (FAO), the International Labour Organization, the International Trade Centre, the United Nations Educational, Scientific and Cultural Organization, the United Nations Environment Programme, the United Nations Conference on Trade and Development, the Office of the United Nations High Commissioner for Human Rights, the World Health Organization, the United Nations Development Programme and the United Nations Industrial Development Organization. WIPO has also coordinated with the World Bank, the World Trade Organization and a range of regional bodies and non-governmental organizations.

## II. Other significant information

24. WIPO participated actively in a technical workshop on indigenous traditional knowledge convened by the Inter-Agency Support Group on Indigenous Issues, organized by the secretariat of the Forum and hosted by the Regional Office for Latin America and the Caribbean of the United Nations Children's Fund (UNICEF). WIPO also funded the participation of an indigenous expert from Papua New Guinea. WIPO provided a written information note for the workshop, available at www.wipo.int/tk/en/cooperation/documents/indigenous_tk.pdf.

## III. Information and suggestions regarding the special theme of the fifth session

25. As noted in the presentations made by the indigenous experts at the workshop organized by the Inter-Agency Support Group, the secretariat of the Forum and UNICEF in Panama City in September 2005, indigenous traditional knowledge not only sustains indigenous and local communities in their daily lives but is also a key element of their identities and self-determination. Such knowledge of indigenous

communities, which reflects their holistic worldviews, also contributes to the world's cultural and biological diversity and is a source of cultural and economic wealth for the communities and for humanity as a whole. Indigenous knowledge systems are, however, subject to a variety of threats. In response, numerous practical, legislative and policy initiatives are under way at the community, national, regional and international levels to enhance the protection of indigenous traditional knowledge. However, as stressed by the indigenous experts who took part in the Panama workshop, respect for indigenous peoples' rights, and in particular their human rights, is at the heart of their concerns about the preservation, promotion and protection of traditional knowledge and cultural expressions. Due consideration of those concerns and perspectives, while preserving, promoting and protecting the traditional knowledge and cultural expressions of indigenous communities will have a direct bearing on the achievement of the Millennium Development Goals.

## IV. Conferences and meetings in 2006

26. Events will include the ninth session of the Intergovernmental Committee to be held in Geneva from 24 to 28 April 2006, followed by the tenth session tentatively scheduled for November or December 2006 (subject to confirmation).